UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CITIZEN ACTION and
DAVID McCOY,

Plaintiffs,

v. **CIV 11-0695 MCA/KBM**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6, and ENVIRONMENTAL PROTECTION AGENCY OFFICE OF INSPECTOR GENERAL,

Defendants.

ORDER FOLLOWING IN CAMERA REVIEW

Pursuant to the parties' settlement agreement in this Freedom of Information Act (FOIA) action, former presiding District Judge John Edwards Conway entered an Order allowing me to retain jurisdiction for the purpose of conducting, if needed, an in camera review of certain documents from which my decision is final. *See Docs. 24 & 25.* As contemplated, Plaintiffs have objected to some redacted material for which Defendants have interposed the "deliberative process privilege" as an exception for information that must be disclosed under the FOIA. I have now completed my review of the documents which were finally submitted to me in both the redacted form given to Plaintiffs and in an unredacted form (Bates-stamped pages 1-95 delivered September 5, 2013).

Having applied the appropriate standards as set forth in the briefs of the parties, and having given due consideration to the objections of Plaintiffs and arguments in opposition to the objections, the Court now orders the disclosure of the following information as falling outside the deliberative process exemption:

Page **Redacted Information Subject to Disclosure**

2 The MWL contains approximately 100,000 ft^3 of low-level radioactive and mixed waste. . . . In 1967, approximately 204,000 gal of tritium-contaminated reactor coolant water was poured into the MWL. Modeling and monitoring indicate no tritium (or other radioactive or hazardous contaminants) below 130 ft (bgs). The groundwater is at approximately.520 ft (bgs). . . . A large amount of reactor water was also put into a Liquid Waste Disposal System (septic) about ¾ mile to the north of the MWL.

14. . . . (high quantity was disposed of at the landfill) . . . . The University of Miami's Tritium Laboratory can perform this analysis.

15. Also noted is the elevated nitrate contamination (4-5 ppm) that is found in the monitoring wells screened in the uppermost portion of the AF aquifer, but is not found or is in much lower concentrations in the wells (1-1.5 ppm) screened in the ARG aquifer.

16 Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level. Under MW5: However, the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies. The water level in this well is about 10 feet above the top of the screen. . . . this well had grout placed inside the well (not the annulus) and it is highly questionable whether this material was fully removed from the screened interval (sand pack) or formation in order to obtain representative groundwater results.

21. The University of Miami's Tritium Laboratory can perform the analysis.

23. Under MW5: the screen extends into the ARG deposits and it has grout in the well (not the annulus). . . . The water level is about 10 feet above the top of the screen. . . .

29. The University of Miami's Tritium Laboratory can perform the analysis.

30. Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer producing the bulk of the water and controlling the water level. Under MW5: T]he screen extends into the ARG facies and it has grout in the well (not the annulus). . . . The water level is about 10 feet above the top of the screen. . . .

33. Under MW4: Both aquifers are mixing in this well, with the more productive ARG aquifer producing the bulk of the water and controlling the water level. Under MW5: . . . the well screen was contaminated with grout during well construction. It is questionable whether the grout material was fully removed from the screened interval (sand pack) or formation, allowing for a representative sample. Though the screen is mostly across the lower AF deposits, the water level in the well is controlled by

the ARG aquifer.

34. Nickel contamination above EPA's MCL was first identified in sampling results from 1992.

35. The University of Miami's Tritium Laboratory can perform this analysis.

40. (a large quantity was disposed of at the landfill). . . . The University of Miami's Tritium Laboratory can perform this analysis.

42. Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level.

43. Under MW5: However, the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies, with mixing of the two zones.

46. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . The University of Miami's Tritium Laboratory can perform this analysis.

49. Under MW4: Both aquifers are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level.
Under MW5: However, the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies, with mixing of the two zones.

51. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . (a large quantity was disposed of at the landfill). . . . The University of Miami's Tritium Laboratory can perform this analysis.

53 Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level.

54. Under MW5: the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies, with mixing of the two zones.

57. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . The University of Miami's Tritium Laboratory can perform this analysis.

63. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . (a large quantity was disposed of at

the landfill). . . . The University of Miami's Tritium Laboratory can perform this analysis.

65. Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level.

69. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . The University of Miami's Tritium Laboratory can perform this analysis

72. Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level. Under MW5: However, the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies, with mixing of the two zones.

81. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . The University of Miami's Tritium Laboratory can perform this analysis.

83. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . The University of Miami's Tritium Laboratory can perform this analysis.

84. Under MW5: the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies, with mixing of the two zones.

89. Nickel contamination above EPA's MCL (100 ppb) was first identified in 1992, only two years after well installation. . . . (a large quantity was disposed of at the landfill). . . . The University of Miami's Tritium Laboratory can perform this analysis.

91. Under MW4: Both aquifers (AF and ARG) are mixing in this well, with the more productive ARG aquifer providing the bulk of the water and controlling the water level.

92. Under MW5: the well screen extends slightly into the ARG deposits and according to the water level, is actually monitoring the ARG facies instead of the AF facies, with mixing of the two zones. Also, this well had a significant amount of grout placed inside the well (not the annulus) and it is highly questionable whether this material was fully removed from the screened interval (sand pack) or formation in order to obtain representative groundwater results.

94. MWL-MW4 has two screened intervals (I in each aquifer, the AF and ARG facies) segregated by an inflatable packer. When the well was installed there was a period of 15 ½ months where the upper screen zone was allowed to drain/mix with

groundwater from the lower screen. . . . there were two other periods (combined total of 6 months) when the packer was removed and allowed the water to mix between the two aquifers.

95. NMED Oversight Bureau just recently (within the past 6 months) sampled approximately 25 monitoring wells at Sandia using the low level tritium method. They did not sample any of the MWL wells using the low level tritium method.

IT IS HEREBY ORDERED that within ten working days of the entry of this Order, Defendants provide to Plaintiffs copies of the above redacted pages but with the information identified above as subject to disclosure under FOIA now visible.

UNITED STATES CHIEF MAGISTRATE JUDGE

.